



**BOARD OF EQUALIZATION**

**BUSINESS TAXES COMMITTEE MEETING MINUTES**

HONORABLE CLAUDE PARRISH, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: DECEMBER 19, 2001, TIME: 1:30 PM

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**ACTION ITEMS & STATUS REPORT ITEMS**

**Agenda Item No: 1**

**Title: Proposed new chapter for the Compliance Policy and Procedures Manual, Chapter 8 (Consumer Use Tax)**

**Issue/Topic:**

Should the proposed revisions to Chapter 8, Consumer Use Tax, be incorporated into the Compliance Policy and Procedures Manual?

**Committee Discussion:**

Discussion of the agenda was as follows:

Action 1, Consent Items

There was no discussion of this item.

Action 2, Authorization to Publish

There was no discussion of this item.

**Committee Action/Recommendation/Direction:**

Action 1, Consent Items

The committee approved all consent items as recommended by staff.

Action 2, Authorization to Publish

The Committee approved publication of new Compliance Policy and Procedures Manual Chapter 8 (Consumer Use Tax) as adopted in the above action. There is no operative date since the proposed revisions represent current administrative policies and procedures.

**Agenda Item No: 2****Title: Proposed regulation to provide explanation of Rural Investment Partial Tax Exemption (Regulation 1525.7, *Rural Investment Tax Exemption*)****Issue/Topic:**

Should Regulation 1525.7, *Rural Investment Tax Exemption*, be adopted to incorporate the statutory changes pursuant to Assembly Bill (AB) 511?

**Committee Discussion:**

Discussion of the agenda was as follows:

Action 1, Consent Items

There was no discussion of this item.

Action 2, Authorization to Publish

There was no discussion of this item.

**Committee Action/Recommendation/Direction:**Action 1, Consent Items

The committee approved all consent items as recommended by interested parties and staff.

Action 2, Authorization to Publish

The Committee recommended that the Board authorize publication of new Regulation 1525.7, *Rural Investment Tax Exemption*, as adopted in the above actions. The provisions of the regulation are operative January 1, 2001 and expire December 31, 2005. Implementation will take place 30 days after approval by the Office of Administrative Law. A copy of the proposed regulation is attached.

**Agenda Item No: 3**

**Title: Proposed clarification of the application of tax to sales by retailers on Indian reservations (Regulation 1616(d)(3), *Federal Areas – Indian Reservations*)**

**Issue/Topic:**

Should Regulation 1616, *Federal Areas*, subdivision (d)(3), Sales by On-Reservation Retailers, be amended to clarify the application of tax to sales by Indian retailers to non-Indian purchasers on Indian Reservations?

**Committee Discussion:**

Discussion of the agenda was as follows:

Action 1, Sales by On-Reservation Retailers – Sales by Indians

Mr. Andal noted that Mr. Klehs' proposal is the same as his, with additional language that he supports. Mr. Klehs moved to make his proposal a combined proposal and Mr. Andal agreed. Several Indian tribes' representatives addressed the Committee in support of the combined proposal, since it brings clarity to the matter and resolves litigation issues.

Action 2, Authorization to Publish

There was no discussion of this item.

**Committee Action/Recommendation/Direction:**Action 1, Sales by On-Reservation Retailers – Sales by Indians

The Committee recommended amending Regulation 1616(d)(3) as proposed in the combined proposal made by Mr. Andal and Mr. Klehs.

Action 2, Authorization to Publish

The Committee recommended that the Board authorize publication of revised Regulation 1616(d), *Federal Areas – Indian Reservations*, as adopted in the above actions. There is no operative date, and implementation will take place 30 days after approval by the Office of Administrative Law. A copy of the proposed regulation is attached.

**Agenda Item No: 4****Title: Proposed regulation regarding application of tax to technology transfer agreements (Regulation 1507, *Technology Transfer Agreements*)****Issue/Topic:**

Should the proposed new Regulation 1507, *Technology Transfer Agreements*, be adopted to clarify the application of tax to technology transfer agreements?

**Committee Discussion:**

Discussion of the agenda was as follows:

Action 1, Consent Items

Noting that there were late interested parties submissions related to consent items, the Committee opened this item for discussion. Several interested parties addressed the Committee in support of these proposals to revise subdivisions (a)(1) and (b)(1). The Committee noted that late submissions are difficult to review and evaluate fully and that written proposals should be made within established deadlines in order to receive full consideration. One interested party expressed concern with the examples used in the proposed amendments to subdivision (b)(1).

Action 2, Sale/Purchase of Business with Pre-Written Software

An interested party addressed the Committee in support of Gray Cary's proposal. Another interested party addressed the Committee in support of staff's recommendation.

Action 3, Authorization to Publish

Staff recommended that minor revisions be made to subdivision (b)(3) of the proposed regulation to remove reference to nonapplicable Board regulations.

**Committee Action/Recommendation/Direction:**Action 1, Consent Items

The Committee approved consent items as recommended by staff but directed staff to continue to work with interested parties on the proposals that were not decided at this meeting. The Committee directed staff to submit its recommendation by February 1, 2002, as to whether the undecided issues should be handled through a legal opinion issued by the Legal staff or through the Business Taxes Committee process.

Action 2, Sale/Purchase of Business with Pre-Written Software

The Committee approved Gray Cary's proposal that a technology transfer agreement includes the sale or purchase of software when the sale and purchase includes the transfer of copyrights, even though the purchaser does not intend to copy and distribute the software to third parties.

*[See Addendum]*

Action 3, Authorization to Publish

The Committee recommended that the Board authorize publication of new Regulation 1507, *Technology Transfer Agreements*, as adopted in the above actions. There is no operative date, and implementation will take place 30 days after approval by the Office of Administrative Law. A copy of the proposed regulation is attached.

Approved: /s/ Claude Parrish  
Honorable Claude Parrish, Committee Chair

/s/ James E. Speed  
James E. Speed, Executive Director

BOARD APPROVED \*

at the December 20, 2001 Board Meeting

/s/ Deborah Pellegrini  
Deborah Pellegrini, Chief  
Board Proceedings Division

\* With the attached addendum reflecting the Board's decision on Agenda Item No. 4, Action 2.

## **BOARD COMMITTEE MEETING MINUTES**

### **ADDENDUM TO DECEMBER 19, 2001 BUSINESS TAXES COMMITTEE MINUTES, Page 4**

#### **Agenda Item No.: 4**

##### Action 2, Sale/Purchase of Business with Pre-Written Software

On December 20, 2001, the Board approved staff's recommendation, rather than Gray Cary's proposal.

**Proposed Regulation 1525.7. Rural Investment Tax Exemption.**

Reference: Section 6378.1, Revenue and Taxation Code.

**(a) GENERAL.** Commencing on and after January 1, 2001, and before January 1, 2006, Section 6378.1 of the Revenue and Taxation Code authorizes the Rural Investment Tax exemption (hereafter "Partial Exemption") which provides a partial exemption from sales or use taxes imposed on the gross receipts from the sale of, and the storage, use, or other consumption in this state, of tangible personal property as defined in subdivision (b)(6) by an eligible entity as defined in subdivision (b)(3).

For the period commencing on January 1, 2001, and ending on December 31, 2001, the Partial Exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, the Partial Exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

The California Infrastructure & Economic Development Bank (CIEDB) Board, part of the California Technology, Trade & Commerce Agency, determines who is eligible to receive this Partial Exemption and monitors eligible entities for compliance with the requirements of the Partial Exemption. As the aggregate amount of this Partial Exemption is limited, the CIEDB Board determines the amount of this Partial Exemption available to each eligible entity.

**(b) DEFINITIONS.** For purposes of this regulation:

(1) "Board" refers to the Board of Equalization.

(2) "CIEDB Board" refers to the California Infrastructure & Economic Development Bank Board.

(3) "Eligible entity" means any entity that meets all of the following:

(A) The entity is deemed eligible for the Partial Exemption in writing by the CIEDB Board.

(B) The entity has been pre-qualified, and re-qualified as applicable, by the Board and registered to hold a California seller's permit or maintain a consumer use tax account.

(4) "Primarily" means used 50 percent or more of the time in a qualified county for the one-year period following the date of purchase of the property. Tangible personal property shall not be considered used for any period of time that the property is located outside a qualified county, regardless of how the property is used while outside the qualified county.

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The proposed revisions contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

## **Proposed Regulation 1525.7**

Regulation 1525.7. *Rural Investment Tax Exemption*  
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(5) “Qualified county” means a California county with an average annual unemployment rate of five percentage points or more above the statewide average for the most recent calendar year as determined by the State of California, Employment Development Department.

(6) “Tangible personal property” includes all of the following:

(A) Machinery and equipment within the meaning of subsection (a)(6) of Regulation 1521 of the Sales and Use Tax Regulations, including component parts and contrivances such as belts, shafts, moving parts, and operating structures. The terms also include conveyance systems and assembly lines without regard to the manner of affixation to real property.

(B) All equipment or devices used or required to operate, control, regulate, or maintain the machinery including, without limitation, computers, data processing equipment, and computer software, including both operating programs and application programs, together with all repair and replacement parts with a useful life of one or more years therefor, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the taxpayer or another party. Repair and replacement parts with a useful life of more than one year may qualify for this Partial Exemption even where such items are expensed for income tax purposes under the special provisions of Internal Revenue Code Section 179.

(7) “Tangible personal property” does not include any of the following:

(A) Any tangible personal property that is used primarily in administration, general management, or marketing.

(B) Furniture, inventory, or equipment used to store products.

(C) Any property for which a credit is claimed under either Section 17053.49 or 23649 of the Revenue and Taxation Code.

(D) Materials or fixtures within the meaning of subsections (a)(4) and (a)(5), respectively, of Regulation 1521 of the Sales and Use Tax Regulations, including such items set forth in Appendix A and B of Regulation 1521.

(E) Fuels.

(F) Real property.

### **(c) PARTIAL EXEMPTION CERTIFICATES.**

(1) OBTAINING AND MAINTAINING THE PARTIAL EXEMPTION CERTIFICATE. To obtain a Partial Exemption certificate, an entity must be pre-qualified by the Board, registered to hold a California seller's permit or maintain a consumer use tax account, and be deemed eligible for the Partial Exemption by the CIEDB Board. An entity shall include in its application a copy of its written notification from the CIEDB Board verifying the entity's eligibility and the amount allocated by the CIEDB Board for use by that eligible entity pursuant to the Partial Exemption. Partial Exemption certificates issued to eligible entities will contain a

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control number and expiration date for verifying the entity's status as an eligible entity. To maintain a Partial Exemption certificate it may be necessary to re-qualify with the Board periodically in accordance with the CIEDB Board's eligibility requirements. A Partial Exemption certificate is not valid if it has not been issued by the Board or if it is accepted after the expiration date on the certificate. Eligible entities that have been pre-qualified or re-qualified, as applicable, may reproduce the issued certificates as needed for their qualifying purchases.

The Partial Exemption certificates issued by the Board will be in substantially the same form as they appear in Appendices A and B of this regulation. Eligible entities who purchase or lease tangible personal property from an in-state retailer or an out-of-state retailer obligated to collect the use tax must provide the retailer with a Partial Exemption certificate in order to claim the Partial Exemption. The Partial Exemption Use Tax Declaration must be completed by an eligible entity to claim a Partial Exemption from use tax on purchases of tangible personal property from an out-of-state retailer not obligated to collect the use tax.

For purposes of this regulation, it is presumed that a seller accepts a Partial Exemption certificate from a purchaser in good faith in the absence of evidence to the contrary.

### (2) CLAIMING THE PARTIAL EXEMPTION.

(A) IN GENERAL. The Partial Exemption from sales or use tax authorized under this part shall not be allowed unless:

1. The eligible entity furnishes the retailer with a Partial Exemption certificate no later than 60 days after the date of purchase; and

2. The retailer timely files a sales and use tax return claiming the Partial Exemption and, together with that timely return, provides the Board with a copy of the Partial Exemption certificate.

(B) EXCLUSIONS. Except as provided in subdivision (c)(2)(C) below, retailers claiming the Partial Exemption in timely filed returns will not be required to furnish the Board with copies of Partial Exemption certificates for sales or leases of tangible personal property made by a retailer at any single physical location to a single eligible entity that do not exceed an aggregate total of \$25,000 during a single calendar quarter. Regardless of the total quarterly sales per purchaser, however, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days written notice, require a retailer to commence furnishing the Board with copies of all certificates on a quarterly basis pursuant to subdivision (c)(2)(A)2.

(C) RETENTION AND AVAILABILITY OF CERTIFICATES. A retailer must retain each Partial Exemption certificate received from an eligible entity for a period of not less than four years from the date on which the retailer claims a Partial Exemption based on the Partial Exemption certificate.

Within 45 days of the Board's request, retailers must furnish to the Board any and all Partial Exemption certificates, or copies thereof, received from eligible entities, including Partial Exemption certificates for aggregate sales or leases of \$25,000 or less to a single eligible entity made at any single physical location of the retailer during a single calendar quarter.

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## **Proposed Regulation 1525.7**

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(3) PARTIAL EXEMPTION USE TAX DECLARATION. A Partial Exemption from the use tax shall not be allowed unless the eligible entity:

(A) Timely files a sales and use tax return or consumer use tax return for the period in which the purchase occurs and timely pays any applicable tax in full that is excluded from this Partial Exemption as provided in subsection (a) of this regulation; and

(B) Attaches a completed Partial Exemption Use Tax Declaration to the sales and use tax return or consumer use tax return that is timely filed with the Board.

### **(d) REFUND OF PARTIAL EXEMPTION.**

(1) For the period commencing on January 1, 2001, and ending on June 30, 2002, an eligible entity may claim the Partial Exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a Partial Exemption certificate on or before September 30, 2002. The retailer must refund the tax or tax reimbursement directly to the purchaser or, at the purchaser's sole option, the purchaser may be credited with such amount. In the event that the retailer has already reported and paid the tax to the Board, the retailer must file a written claim for refund on or before October 31, 2002.

(2) An eligible entity who paid sales tax on a qualified sale or paid use tax on a qualified purchase and who failed to claim the Partial Exemption as provided by this regulation may file a claim for refund equal to the amount of the Partial Exemption that he or she could have claimed pursuant to this regulation. The procedure for such a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code Section 6901. For transactions subject to use tax, an eligible entity filing a claim for refund of the Partial Exemption has the burden of establishing that he or she was entitled to claim the Partial Exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the Partial Exemption has the burden of establishing that the purchaser of the qualified property otherwise met all the requirements of an eligible entity at the time of the purchase subject to the refund claimed under this part.

### **(e) IMPROPER USE OF PARTIAL EXEMPTION.**

(1) CONVERSION OF PROPERTY TO A USE NOT QUALIFYING FOR THE PARTIAL EXEMPTION. Notwithstanding subdivision (a), this Partial Exemption shall not apply to any sale of, or the storage, use, or other consumption in this state of property that, within one year from the later of the date of purchase of the property or the date that the property was first placed into service by the purchaser in an exempt use, is: (i) removed from a qualified county, (ii) converted from an exempt use under this regulation to some other use not qualifying for the Partial Exemption, or (iii) used in a manner not qualifying for the Partial Exemption under this regulation.

For purposes of this regulation, property is converted to a use not qualifying for the Partial Exemption if, without limitation, the property, or any interest in the property, or possession or control of the property, is either directly or indirectly sold, transferred, leased, or assigned to an entity who is not an eligible entity on the date the property is sold, transferred, leased, or assigned to such non-eligible entity. In the case of a corporation that, as an eligible entity, purchases tangible personal property under this Partial Exemption and then, within one year from the later of the date of purchase of the property or the date that the property was first placed into

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service by that corporation in an exempt use, either directly or indirectly transfers that property to its parent corporation that is not an eligible entity on the date of the transfer of property to the parent corporation, that property has been converted to a use not qualifying for the Partial Exemption.

Tangible personal property shall not be considered used in a qualifying manner for any period of time that the property is located outside a qualified county, regardless of how the property is used while outside such a county.

(2) PURCHASES BY INELIGIBLE ENTITIES. Notwithstanding subdivision (a), this Partial Exemption shall not apply if a purchaser subsequently does not meet the requirements of an eligible entity as determined by the CIEDB Board.

(3) PURCHASES EXCEEDING THE PARTIAL EXEMPTION ALLOTMENT. Notwithstanding subdivision (a), this Partial Exemption shall not apply to any sale of, or the storage, use, or other consumption in this state of tangible personal property purchased by an eligible entity that exceeds the amounts allocated by the CIEDB Board for use by that eligible entity pursuant to the partial exemption.

### **(f) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX.**

(1) If a purchaser timely submits a copy of a Partial Exemption certificate to the seller or Partial Exemption Use Tax Declaration to the Board, and then within one year from the later of the date of purchase of the property or the date that the property was first placed into service by the purchaser in an exempt use, the purchaser either (i) removes that property from a qualified county, (ii) converts the property from an exempt use under this regulation to some other use not qualifying for the Partial Exemption, or (iii) uses that property in a manner not qualifying for the Partial Exemption under this regulation, then, in that event, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was so removed, converted, or used.

(2) A purchaser providing a Partial Exemption certificate accepted timely and in good faith by the seller or a Partial Exemption Use Tax Declaration to the Board for tangible personal property that does not qualify for the Partial Exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was purchased.

### **(g) LEASES TO QUALIFYING PERSONS.**

(1) LEASES--IN GENERAL. Subject to all the limitations and conditions set forth in this regulation, this Partial Exemption may apply to rental receipts paid by an eligible entity with respect to a lease of tangible personal property to the eligible entity.

(2) LEASES--ACQUISITION SALE AND LEASEBACK. An eligible entity will be regarded as having paid sales tax reimbursement or use tax with respect to that eligible entity's purchase of property, within the meaning of those words as they are used in Section 6010.65 of the Revenue and Taxation Code, if the eligible entity has paid all applicable taxes with respect to the acquisition of the property, notwithstanding the fact that the sale and purchase of the property may have been subject to the Partial Exemption from tax provided by this regulation.

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## **Proposed Regulation 1525.7**

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(3) SUBSEQUENT LEASE OF PROPERTY ACQUIRED SUBJECT TO PARTIAL EXEMPTION. If an eligible entity has acquired property subject to the Partial Exemption provided by this regulation and has paid all applicable taxes at that acquisition, the property will be regarded as property as to which sales tax reimbursement or use tax has been paid, and the subsequent lease of that property will not be subject to tax measured by rental receipts.

(h) RECORDS. Adequate and complete records must be maintained by the eligible entity as evidence that the property purchased qualifies under the provisions of this regulation and that the property was used by the eligible entity. The eligible entity must also maintain detailed records to show the amount of the tax benefit derived from this Partial Exemption as each eligible entity will have an annual limit established by the CIEDB Board.

The Board shall, within one year after being notified by the CIEDB Board that an entity has not fulfilled the requirements of this Section, examine the books and records of the entity, and issue a determination of any liabilities due.

(i) OPERATIVE DATE. This regulation is operative as of January 1, 2001 and expires December 31, 2005 unless extended by act of the Legislature.

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**Proposed Regulation 1525.7**Regulation 1525.7. *Rural Investment Tax Exemption*  
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**SECTION 6378.1 RURAL INVESTMENT TAX EXEMPTION CERTIFICATE**STATE OF CALIFORNIA  
BOARD OF EQUALIZATION**PLEASE NOTE**

This is a partial exemption from sales and use taxes which is at the rate of 4.75% from January 1, 2001 through December 31, 2001, and 5% effective January 1, 2002. You are not relieved from your obligations for the local and district taxes on this transaction. The partial exemption is specific to this transaction only and may not be construed to exempt other transactions. Generally, the partial exemption will not be allowed unless this certificate is issued within 60 days after the date of purchase and the retailer claims the partial exemption on a timely filed return. Void after expiration date.

Certificate No:Expires:

**I hereby certify that the tangible personal property described below and purchased or leased from:**  
**(enter seller's/lessor's name and address)**

SELLER'S NAMESELLER'S ADDRESS (Street, City, County, State, Zip Code)

will be used by me primarily at my facility located at (enter facility's address):

(Street, City, County, State, Zip Code)

<u>SALES INVOICE NUMBER</u>	<u>SALES INVOICE DATE</u>	<u>DESCRIPTION OF PROPERTY PURCHASED OR LEASED*</u>	<u>SALES PRICE/ RENTALS PAYABLE</u>

I understand that if such property is, within one year from the date of purchase or lease, removed from a qualified county described in Regulation 1525.7(b)(5), converted from an exempt use under Regulation 1525.7(e) to some other use not qualifying for the partial exemption, or otherwise used in a manner not qualifying for the partial exemption that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. \*Attach a copy of the lease agreement.

<u>PRINT NAME OF PURCHASER OR PURCHASER'S AUTHORIZED REPRESENTATIVE</u>	<u>TITLE</u>	<u>TELEPHONE</u>
<u>SIGNATURE</u>	<u>DATE</u>	<u>PERMIT NUMBER</u>

**\*\*NOT VALID UNLESS COMPLETED BY THE CALIFORNIA STATE BOARD OF EQUALIZATION**

The following business has been registered as an "eligible entity" who has certified that this purchase/lease of tangible personal property will be used in

<u>BUSINESS NAME</u>	<u>CIEDB Board Authorization Number</u>
<u>BUSINESS ADDRESS</u> (Street, City, County, State, Zip Code)	<u>PERMIT NUMBER</u>

**\*\*AUTHORIZED BY (Must be signed by two Board representatives)**

<u>REVIEWED BY</u>	<u>DATE</u>
<u>APPROVED BY</u>	<u>DATE</u>

**\*\* WHEN COMPLETED AND SIGNED, THIS FORM MAY BE REPRODUCED FOR USE BY THE QUALIFIED PERSON LISTED ABOVE****Appendix A**

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**Proposed Regulation 1525.7**Regulation 1525.7. *Rural Investment Tax Exemption*  
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**SECTION 6378.1 RURAL INVESTMENT USE TAX DECLARATION**STATE OF CALIFORNIA  
BOARD OF EQUALIZATION**PLEASE NOTE**

This partial exemption being declared applies only to the state use tax which is at the rate of 4.75% from January 1, 2001 through December 31, 2001, and 5% effective January 1, 2002, and is specific to this transaction only and may not be construed to exempt other transactions. As the purchaser, you remain liable for the applicable local and district taxes. To claim the partial exemption, this declaration must accompany a timely filed sales and use tax return for the period of purchase. Void after expiration date.

Certificate No:Expires:

**I hereby certify that the tangible personal property described below and purchased or leased from:**  
**(enter seller's/lessor's name and address)**

SELLER'S NAMESELLER'S ADDRESS (Street, City, County, State, Zip Code)will be used by me primarily at my facility located at (enter facility's address):

(Street, City, County, State, Zip Code)

<u>SALES INVOICE NUMBER</u>	<u>SALES INVOICE DATE</u>	<u>DESCRIPTION OF PROPERTY PURCHASED OR LEASED*</u>	<u>SALES PRICE/ RENTALS PAYABLE</u>

I understand that if such property is, within one year from the date of purchase or lease, removed from a qualified county described in Regulation 1525.7 (b)(5) or converted from an exempt use under Regulation 1525.7(e) to some other use not qualifying for the partial exemption, or otherwise used in a manner not qualifying for the partial exemption that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. \*Attach a copy of the lease agreement.

<u>PRINT NAME OF PURCHASER OR PURCHASER'S AUTHORIZED REPRESENTATIVE</u>	<u>TITLE</u>	<u>TELEPHONE</u>
<u>SIGNATURE</u>	<u>DATE</u>	<u>PERMIT NUMBER</u>

**\*\*NOT VALID UNLESS COMPLETED BY THE CALIFORNIA STATE BOARD OF EQUALIZATION**

The following business has been registered as a "eligible entity" who has certified that this purchase/lease of tangible personal property will be used in a

<u>BUSINESS NAME</u>	<u>CIEDB Board Authorization Number</u>
<u>BUSINESS ADDRESS</u> (Street, City, County, State, Zip Code)	<u>PERMIT NUMBER</u>

**\*\*AUTHORIZED BY: (Must be signed by two Board representatives)**

<u>REVIEWED BY</u>	<u>DATE</u>
<u>APPROVED BY</u>	<u>DATE</u>

**\*\* WHEN COMPLETED AND SIGNED, THIS FORM MAY BE REPRODUCED FOR USE BY THE QUALIFIED PERSON LISTED ABOVE**Appendix B

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**Regulation 1616. FEDERAL AREAS.**

**(a) IN GENERAL.** Tax applies to the sale or use of tangible personal property upon Federal areas to the same extent that it applies with respect to sale or use elsewhere within this state.

**(b) ALCOHOLIC BEVERAGES.** Manufacturers, wholesalers and rectifiers who deliver or cause to be delivered alcoholic beverages to persons on Federal reservations, shall pay the state retailer sales tax on the selling price of such alcoholic beverages so delivered, except when such deliveries are made to persons or organizations which are instrumentalities of the Federal Government or persons or organizations which purchase for resale.

Sales to officers' and non-commissioned officers' clubs and messes may be made without sales tax when the purchasing organizations have been authorized, under appropriate regulations and control instructions, duly prescribed and issued, to sell alcoholic beverages to authorized purchasers.<sup>1</sup>

**(c) SALES THROUGH VENDING MACHINES.** Sales through vending machines located on Army, Navy, or Air Force installations are taxable unless the sales are made by operators who lease the machines to exchanges of the Army, Air Force, Navy, or Marine Corps, or other instrumentalities of the United States, including Post Restaurants and Navy Civilian Cafeteria Associations, which acquire title to and sell the merchandise through the machines to authorized purchasers.

For the exemption to apply, the contracts between the operators and the United States instrumentalities and the conduct of the parties must make it clear that the instrumentalities acquire title to the merchandise and sell it through machines leased from the operators to authorized purchasers.

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<sup>1</sup>The following is a summary of the pertinent regulations which have been issued:

(a) **General.** Air Force Regulation 34-57, issued under date of February 9, 1968, Army Regulation 210-65, issued under date of May 4, 1966, and Navy General Order No. 15, issued under date of May 5, 1965, authorize the sale and possession of alcoholic beverages at bases and installations subject to certain enumerated restrictions.

(b) **Air Force.** Air Force Regulation 34-57, Paragraph 5, permits commissioned officers' and noncommissioned officers' open messes, subject to regulations established by commanders of major air commands to sell alcoholic beverages to authorized purchasers at bars and cocktail lounges, and provides that commanders will issue detailed control instructions. Paragraph 8 and 9 require commanders of major air commands to issue regulations relative to package liquor sales and to procurement of alcoholic beverages, respectively.

(c) **Army.** Army Regulation 210-65, Paragraph 9, provides that major commanders are authorized to permit at installations or activities within their respective commands the dispensing of alcoholic beverages by the drink or bottle. Paragraph 11 of AR 210-65 provides that when authorized by major commanders as prescribed in Paragraph 9, AR 210-65, officers' and non-commissioned officers' open messes may, subject to regulations prescribed by the commanding officer of the installation or activity concerned, dispense alcoholic beverages by the drink, and operate a package store.

(d) **Navy.** Navy General Order No. 15 provides that commanding officers may permit, subject to detailed alcoholic beverage control instructions, the sales of packaged alcoholic beverages by officers' and noncommissioned officers' clubs and messes and the sale and consumption of alcoholic beverages by the drink in such clubs and messes.

**(d) INDIAN RESERVATIONS.**

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(1) IN GENERAL. Except as provided in this regulation, tax applies to the sale or use of tangible personal property upon Indian reservations to the same extent that it applies with respect to sale or use elsewhere within this state.

(2) DEFINITIONS. For purposes of this regulation “Indian” means any person of Indian descent who is entitled to receive services as an Indian from the United States Department of the Interior. Indian organizations are entitled to the same exemption as are Indians. “Indian organization” includes Indian tribes and tribal organizations and also includes partnerships all of whose members are Indians. The term includes corporations organized under tribal authority and wholly owned by Indians. The term excludes other corporations, including other corporations wholly owned by Indians. “Reservation” includes reservations, rancherias, and any land held by the United States in trust for any Indian tribe or individual Indian.

(3) SALES BY ON-RESERVATION RETAILERS.

(A) Sales by Indians.

1. Sales by Indians to Indians who reside on a reservation. Sales tax does not apply to sales of tangible personal property made to Indians by Indian retailers negotiated at places of business located on Indian reservations if the purchaser resides on a reservation and if the property is delivered to the purchaser on a reservation. The purchaser is required to pay use tax only if, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

2. Sales by Indians to non-Indians and Indians who do not reside on a reservation. Sales tax does not apply to sales of tangible personal property by Indian retailers made to non-Indians and Indians who do not reside on a reservation when the sales are negotiated at places of business located on Indian reservations if the property is delivered to the purchaser on the reservation. Except as exempted below, Indian retailers are required, however, to collect use tax from such purchasers and must register with the Board for that purpose.

a. Indian retailers selling meals, food or beverages at eating and drinking establishments are not required to collect use tax on the sale of the meals, food or beverages that are sold for consumption on an Indian reservation.

b. In addition to the exemption provided in subdivision (d)(3)(A)2.a., Indian retailers are not required to collect use tax when the tangible personal property sold or served has reservation-based value. As used herein the term “reservation-based value” shall mean that: (1) the Indian retailer has made a substantial contribution with respect to the development or production of the tangible personal property or (2) the tangible personal property has a substantial connection to the Indian retailer because of the involvement of the Indian retailer in the financing, manufacturing, marketing or regulation of the tangible personal property for use or consumption on the Indian retailer’s reservation.

(B) Sales by non-Indians.

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1. Sales by non-Indians to Indians who reside on a reservation. Sales tax does not apply to sales of tangible personal property made to Indians by retailers when the sales are negotiated at places of business located on Indian reservations if the property is delivered to the purchaser on a reservation. The sale is exempt whether the retailer is a federally licensed Indian trader or is not so licensed. The purchaser is required to pay use tax only if, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

2. Sales by non-Indians to non-Indians and Indians who do not reside on a reservation. Either sales tax or use tax applies to sales of tangible personal property by non-Indian retailers to non-Indians and Indians who do not reside on a reservation.

**(C) Resale Certificates.** Persons making sales for resale of tangible personal property to retailers conducting business on an Indian reservation should obtain resale certificates from their purchasers. If the purchaser does not have a permit and all the purchaser's sales are exempt under paragraph (d)(3)(A) of this regulation, the purchaser should make an appropriate notation to that effect on the certificate in lieu of a seller's permit number (see Regulation 1668, "Resale Certificates").

#### **(4) SALES BY OFF-RESERVATION RETAILERS.**

**(A) Sales Tax - In General.** Sales tax does not apply to sales of tangible personal property made to Indians negotiated at places of business located outside Indian reservations if the property is delivered to the purchaser and ownership to the property transfers to the purchaser on the reservation. Generally ownership to property transfers upon delivery if delivery is made by facilities of the retailer and ownership transfers upon shipment if delivery is made by mail or carrier. Except as otherwise expressly provided herein, the sales tax applies if the property is delivered off the reservation or if the ownership to the property transfers to the purchaser off the reservation.

**(B) Sales Tax - Permanent Improvements - In General.** Sales tax does not apply to a sale to an Indian of tangible personal property (including a trailer coach) to be permanently attached by the purchaser upon the reservation to realty as an improvement if the property is delivered to the Indian on the reservation. A trailer coach will be regarded as having been permanently attached if it is not registered with the Department of Motor Vehicles. Sellers of property to be permanently attached to realty as an improvement should secure exemption certificates from their purchasers (see Regulation 1667, "Exemption Certificates").

#### **(C) Sales Tax - Permanent Improvements - Construction Contractors.**

1. Indian contractors. Sales tax does not apply to sales of materials to Indian contractors if the property is delivered to the contractor on a reservation. Sales tax does not apply to sales of fixtures furnished and installed by Indian contractors on Indian reservations. The term "materials" and "fixtures" as used in this paragraph and the following paragraph are as defined in Regulation 1521 "Construction Contractors."

2. Non-Indian contractors. Sales tax applies to sales of materials to non-Indian contractors notwithstanding the delivery of the materials on the reservation and the permanent attachment of

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the materials to realty. Sales tax does not apply to sales of fixtures furnished and installed by non-Indian contractors on Indian reservations.

**(D) Use Tax - In General.** Except as provided in paragraphs (d)(4)(E) and (d)(4)(F) of this regulation, use tax applies to the use in this state by an Indian purchaser of tangible personal property purchased from an off-reservation retailer for use in this state.

**(E) Use Tax - Exemption.** Use tax does not apply to the use of tangible personal property (including vehicles, vessels, and aircraft) purchased by an Indian from an off-reservation retailer and delivered to the purchaser on a reservation unless, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

**(F) Leases.** Neither sales nor use tax applies to leases otherwise taxable as continuing sales or continuing purchases as respects any period of time the leased property is situated on an Indian reservation when the lease is to an Indian who resides upon the reservation. In the absence of evidence to the contrary, it shall be assumed that the use of the property by the lessee occurs on the reservation if the lessor delivers the property to the lessee on the reservation. Tax applies to the use of leased vehicles registered with the Department of Motor Vehicles to the extent that the vehicles are used off the reservation.

Reference: Sections 6017 and 6021, 6352 Revenue and Taxation Code.  
Public Law No. 817-76<sup>th</sup> Congress (Buck Act).

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**Regulation 1507. TECHNOLOGY TRANSFER AGREEMENTS**

Reference: *Sections 6011, 6012, Revenue and Taxation Code*

**(a) DEFINITIONS.**

(1) Technology transfer agreement means an agreement evidenced by a writing (e.g., invoice, purchase order, contract, etc.) that assigns or licenses a copyright interest in tangible personal property for the purpose of reproducing and selling other property subject to the copyright interest. A technology transfer agreement also means a written agreement that assigns or licenses a patent interest for the right to manufacture and sell property subject to the patent interest, or a written agreement that assigns or licenses the right to use a process subject to a patent interest.

A technology transfer agreement does not mean an agreement for the transfer of any tangible personal property manufactured pursuant to a technology transfer agreement, nor an agreement for the transfer of any property derived, created, manufactured, or otherwise processed by property manufactured pursuant to technology transfer agreement. A technology transfer agreement also does not mean an agreement for the transfer of prewritten software as defined in subdivision (b) of Regulation 1502, *Computers, Programs, and Data Processing*.

Example No. 1: Company X holds a copyright in certain tangible artwork. Company X transfers (temporarily or otherwise) its artwork to Company Y and, in writing, transfers (temporarily or otherwise) a copyright interest to Company Y authorizing it to reproduce and sell tangible personal property subject to Company X's copyright interest in the artwork. Company X's transfer to Company Y constitutes a technology transfer agreement. Company Y's sales of tangible personal property containing reproductions of Company X's artwork do not constitute a technology transfer agreement.

Example No. 2: Company X holds patents for widgets and the process for manufacturing such widgets. Company X, in writing, transfers (temporarily or otherwise) its patent interests to sell widgets and the process used to manufacture such widgets to Company Y. Company X's transfer of its patent interests to Company Y constitutes a technology transfer agreement. Company Y's sale or storage, use, or other consumption of any widgets that it manufactures does not constitute a technology transfer agreement. Company Y's sale or storage, use, or other consumption of any tangible personal property used to manufacture widgets also does not constitute a technology transfer agreement.

Example No. 3: Company X manufactures and leases a patented medical device to Company Y. As part of the lease of the medical device, Company X also transfers to Company Y, in writing, a separate patent interest in a process external to the medical device that involves the use, application or manipulation of the medical device. Company X charges a monthly rentals payable for the equipment

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as well as a separate charge for each time the separate patented process external to the medical device is performed by Company Y. Company X's lease of the medical device to Company Y to perform the separately patented process is not a technology transfer agreement and tax applies to the entire rentals payable for the medical equipment. Company X's transfer of its separate patent interest for the right to perform the separate patented process external to the medical device is a technology transfer agreement. Company X's separate charges to Company Y for the right to perform the separate patented process external to the medical device are not subject to tax provided they relate to the right to perform the separate patented process, are not for the lease of the medical device, and represent a reasonable charge for the right to perform the separate patented process external to the medical device. Where the separate charges for the right to perform the separate patented process relate to the patented technology embedded in the internal design, assembly or operation of the medical device, Company X's separate charges for the right to perform the separate patented process are not pursuant to a technology transfer agreement and are instead part of the rentals payable from the lease of the medical device.

(2) Copyright interest means the exclusive right held by the author of an original work of authorship fixed in any tangible medium to do and to authorize any of the following: to reproduce a work in copies or phonorecords; to prepare derivative works based upon a work; to distribute copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending; to perform a work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works; to display a copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and in the case of sound recordings, to perform the work publicly by means of a digital audio transmission. For purposes of this regulation, an "original work of authorship" includes any literary, musical, and dramatic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings, including phonograph and tape recordings; and architectural works represented or contained in tangible personal property.

(3) Patent interest means the exclusive right held by the owner of a patent issued by the United States Patent and Trademark Office to make, use, offer to sell, or sell a patented process, machine, manufacture, composition of matter, or material. "Process" means one or more acts or steps that produce a concrete, tangible and useful result that is patented by the United States Patent and Trademark Office, such as the means of manufacturing tangible personal property. Process may include a patented process performed with an item of tangible personal property, but does not mean or include the mere use of tangible personal property subject to a patent interest.

(4) Assign or license means to transfer in writing a patent or copyright interest to a person who is not the original holder of the patent or copyright interest where, absent the

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assignment or license, the assignee or licensee would be prohibited from making any use of the copyright or patent provided in the technology transfer agreement.

**(b) APPLICATION OF TAX**

(1) Tax applies to amounts received for any tangible personal property transferred as part of a technology transfer agreement. Tax does not apply to amounts received for the assignment or licensing of a patent or copyright interest as part of a technology transfer agreement. The gross receipts or sales price attributable to any tangible personal property transferred as part of a technology transfer agreement shall be:

(A) The separately stated sale price for the tangible personal property, provided the separately stated price represents a reasonable fair market value of the tangible personal property;

(B) Where there is no such separately stated price, the separate price at which the tangible personal property or like tangible personal property was previously sold, leased, or offered for sale or lease, to an unrelated third party; or,

(C) If there is no such separately stated price and the tangible personal property, or like tangible personal property, has not been previously sold or leased, or offered for sale or lease to an unrelated third party, 200 percent of the combined cost of materials and labor used to produce the tangible personal property. "Cost of materials" consists of those materials used or otherwise physically incorporated into any tangible personal property transferred as part of a technology transfer agreement. "Cost of labor" includes any charges or value of labor used to create the tangible personal property whether the transferor of the tangible personal property contributes such labor, a third party contributes the labor, or the labor is contributed through some combination thereof. The value of labor provided by the transferor of the tangible personal property shall equal the separately stated, reasonable charge for such labor. Where no separately stated charge for labor is made, the value of labor shall equal the lower of the taxpayer's normal and customary charges for labor made to third persons, or the fair market value of such labor performed.

(2) Tax applies to all amounts received from the sale or storage, use, or other consumption of tangible personal property coupled with a patent or copyright interest, where the transfer is not pursuant to a technology transfer agreement.

(3) Specific Applications. Tax applies to the sale or storage, use, or other consumption of artwork and commercial photography pursuant to a technology transfer agreement as set forth in Regulation 1540, *Advertising Agencies and Commercial Artists*.

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